

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

ALLEN KEE,

Plaintiff,

Civil Case No. 1:24-cv-223-ALC

V.

THE DETROIT LIONS, INC.; GETTY IMAGES
(US), INC.; NFL PROPERTIES, LLC; NFL
ENTERPRISES, LLC; FANATICS RETAIL
GROUP NORTH, LLC; DICK'S SPORTING
GOODS, INC.; BULLION INTERNATIONAL,
INC. d/b/a THE HIGHLAND MINT; TIMELESS
CREATIONS, INC.; MCFARLANE TOYS, INC.;
KEVIN GORDON d/b/a VC COLLECTIBLES; and
JOHN DOES 1-10,

Defendants.

**FANATICS RETAIL GROUP NORTH, LLC'S ANSWER TO
FIRST AMENDED COMPLAINT**

Defendant Fanatics Retail Group North, LLC ("Fanatics") submits this answer to the First Amended Complaint ("FAC") filed by Plaintiff Allen Kee ("Kee") on April 12, 2024 (Dkt. No. 50). Fanatics denies each allegation except those expressly admitted below.

PARTIES¹

1. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

2. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

¹ Certain headings of the FAC are included herein for convenience only and without admitting any allegations that may be contained in such headings. To the extent that the headings of the Complaint may be deemed to be allegations, Fanatics denies them.

3. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

4. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

5. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

6. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

7. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

8. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

9. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

10. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

11. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

12. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

13. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

14. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

15. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

16. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

17. Fanatics denies that it is a Delaware corporation and affirmatively states that it is a subsidiary of Fanatics, LLC, a Delaware limited liability company. Fanatics admits that it holds licensing rights to manufacture and distribute certain NFL apparel and other merchandise. Fanatics denies the remaining allegations in this paragraph.

18. Admitted.

19. Fanatics admits that it operates the NFL Shop located at www.nflshop.com. Fanatics denies the remaining allegations in this paragraph.

20. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

21. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

22. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

23. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

24. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

25. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

26. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

27. This paragraph does not contain factual allegations and, as such, no response is required. To the extent a response is required, Fanatics denies the allegations in this paragraph.

28. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

JURISDICTION AND VENUE

29. This paragraph is a summary of Kee's action and contains allegations of law and legal conclusions, to which no response is required. To the extent a response is required, Fanatics denies the allegations in this paragraph.

30. This paragraph contains allegations of law and legal conclusions, to which no response is required. To the extent a response is required, Fanatics denies the allegations in this paragraph.

31. This paragraph contains allegations of law and legal conclusions, to which no response is required. To the extent a response is required, Fanatics denies the allegations in this paragraph.

32. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

33. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

34. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

35. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

36. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

37. Fanatics admits that it conducts business in this District. Fanatics denies the remaining allegations in this paragraph.

38. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

39. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

40. Fanatics admits that it advertises, sells, and distributes sports memorabilia products in the state of New York and in this District. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph and on that basis denies them.

41. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

42. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

43. Fanatics denies that it has infringed any of Kee's alleged intellectual property rights. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph and on that basis denies them.

44. Fanatics denies that it has infringed any of Kee's alleged intellectual property rights. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph and on that basis denies them.

FACTUAL ALLEGATIONS

Plaintiff's Photograph

45. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

46. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

47. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

48. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

49. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

50. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

51. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

52. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

53. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

54. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

55. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

56. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

57. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

58. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

59. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

60. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

61. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

Getty Images

62. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

63. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

64. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

65. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

66. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

67. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

68. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

69. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

70. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

71. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

72. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

Detroit Lions & TCI

73. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

74. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

75. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

76. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

77. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

78. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

79. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

80. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

81. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

82. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

83. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

84. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

85. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

Retail Defendants

86. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

87. Fanatics admits the PHOTO MINT PRODUCT features two photographs. Fanatics denies the remaining allegations in the paragraph.

88. This paragraph of the FAC is blank and contains no allegations. Thus, no response is required.

89. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

90. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

91. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

92. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

93. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

94. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

95. Admitted.

96. Fanatics states that Exhibit 4 is a document that speaks for itself; accordingly, Fanatics denies any allegation in this paragraph that is inconsistent with, mischaracterizes, omits in any way, or deviates from the document. Fanatics denies the remaining allegations in this paragraph, except it admits that it offered the PHOTO MINT PRODUCT for sale on its website.

97. Fanatics admits that the PHOTO MINT PRODUCT was offered for sale at the NFL Shop located at www.nflshop.com. Fanatics denies the remaining allegations in this paragraph.

98. Fanatics states that Exhibit 5 is a document that speaks for itself; accordingly, Fanatics denies any allegation in this paragraph that is inconsistent with, mischaracterizes, omits in any way, or deviates from the document. Fanatics denies the remaining allegations in this paragraph, except it admits that the PHOTO MINT PRODUCT was offered for sale at the NFL Shop located at www.nflshop.com.

99. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

100. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

101. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

102. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

103. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

104. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

105. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

106. Fanatics admits that it sold the PHOTO MINT PRODUCT and denies the remaining allegations in this paragraph that are directed to it. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph related to other defendants and on that basis denies them.

General Allegations

107. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

108. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

109. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

110. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

111. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

112. This paragraph does not contain factual allegations and, as such, no response is required. To the extent a response is required, Fanatics denies the allegations in this paragraph.

113. Fanatics denies the allegations in this paragraph that are directed to it. Fanatics knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph related to other defendants and on that basis denies them.

114. Fanatics denies the allegations in this paragraph that are directed to it. Fanatics knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph related to other defendants and on that basis denies them.

COUNT I
DIRECT, CONTRIBUTORY and/or VICARIOUS
COPYRIGHT INFRINGEMENT
AGAINST ALL DEFENDANTS

115. Fanatics incorporates its responses and denials to the preceding paragraphs as if fully set forth herein.

116. This paragraph contains allegations of law and legal conclusions, to which no response is required. To the extent a response is required, Fanatics denies the allegations in this paragraph.

117. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

118. Fanatics denies the allegations in this paragraph that are directed to it. Fanatics knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph related to other defendants and on that basis denies them.

119. Fanatics denies the allegations in this paragraph that are directed to it. Fanatics knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph related to other defendants and on that basis denies the.

120. Fanatics denies the allegations in this paragraph that are directed to it. Fanatics knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph related to other defendants and on that basis denies the.

121. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

122. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

123. Fanatics denies the allegations in this paragraph that are directed to it. Fanatics knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph related to other defendants and on that basis denies them.

124. Fanatics denies the allegations in this paragraph that are directed to it. Fanatics knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph related to other defendants and on that basis denies them.

125. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

126. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

127. This paragraph contains allegations of law and legal conclusions, to which no response is required. To the extent a response is required, Fanatics denies the allegations in this paragraph.

COUNT II
BREACH OF CONTRACT
(AGAINST THE NFL DEFENDANTS)

128. Fanatics incorporates its responses and denials to the preceding paragraphs as if fully set forth herein.

129. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

130. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

131. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

132. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

COUNT III
VIOLATION OF DMCA § 1202

133. Fanatics incorporates its responses and denials to the preceding paragraphs as if fully set forth herein.

134. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

135. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

136. This paragraph contains allegations of law and legal conclusions, to which no response is required. To the extent a response is required, Fanatics denies the allegations in this paragraph.

COUNT IV
REQUEST FOR DECLARATORY JUDGMENT

137. Fanatics incorporates its responses and denials to the preceding paragraphs as if fully set forth herein.

138. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

139. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

140. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

141. Fanatics lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on that basis denies them.

142. This paragraph contains allegations of law and legal conclusions, to which no response is required. To the extent a response is required, Fanatics denies the allegations in this paragraph.

The paragraphs containing Kee's prayer for judgment and relief are not allegations and, instead, consist of legal conclusions and therefore no response is required. To the extent a response is required, Fanatics denies the allegations in these paragraphs.

FANATICS' AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses to the FAC, Fanatics alleges as follows:

FIRST AFFIRMATIVE DEFENSE

The FAC fails to state a claim upon which any relief can be granted against Fanatics.

SECOND AFFIRMATIVE DEFENSE

Kee lacks standing to bring the claims asserted against Fanatics to the extent that he does not own a copyright interest in the photograph at issue.

THIRD AFFIRMATIVE DEFENSE

Kee's claim against Fanatics is barred in whole or in part to the extent that the photograph at issue is not original, is in the public domain, and/or does not constitute protectable and copyrightable subject matter.

FOURTH AFFIRMATIVE DEFENSE

Kee's claim against Fanatics is barred in whole or in part to the extent that it is based on the alleged infringement of a work for which: (i) valid and enforceable copyright registration certificates do not exist and/or (ii) the relevant certificates contain materially false and/or inaccurate information relating to the nature, ownership, or chain of title to the work.

FIFTH AFFIRMATIVE DEFENSE

To the extent that the photograph at issue contains any protectable expression that was used by Fanatics, Kee's claim against Fanatics fails because such use is protected, and not actionable, under the doctrine of fair use.

SIXTH AFFIRMATIVE DEFENSE

Kee's claim against Fanatics may be barred in whole or in part by the doctrines of estoppel, waiver, unclean hands, and/or acquiescence and consent.

SEVENTH AFFIRMATIVE DEFENSE

Kee's claim against Fanatics may be barred in whole or in part due to the existence of an express and/or implied license to the photograph at issue.

EIGHTH AFFIRMATIVE DEFENSE

Fanatics does not infringe and has not infringed the asserted copyright.

NINTH AFFIRMATIVE DEFENSE

To the extent that Fanatics engaged in any of the acts alleged by Kee, it did so innocently and in good faith, and without knowledge of Kee's alleged copyright or reason to believe that such acts constituted infringement.

TENTH AFFIRMATIVE DEFENSE

Kee's claim against Fanatics is barred in whole or in part by his failure to mitigate damages.

ELEVENTH AFFIRMATIVE DEFENSE

Kee's claim against Fanatics is barred in whole or in part to the extent that any alleged similarity between Kee's alleged copyright and the PHOTO MINT PRODUCT does not constitute substantial similarity in protectable expression.

TWELFTH AFFIRMATIVE DEFENSE

To the extent that the photograph at issue contains any protectable expression that was used by Fanatics, Kee's claim against Fanatics fails because such use was *de minimis*.

THIRTEENTH AFFIRMATIVE DEFENSE

Kee's claim for statutory damages, as well as any claim for attorney's fees, is barred under 17 U.S.C. § 412 because the acts alleged to constitute infringement commenced before the effective date of Kee's alleged copyright registration.

ADDITIONAL AFFIRMATIVE DEFENSES

Fanatics reserves the right to raise additional affirmative defenses that may be identified through the course of discovery.

DEMAND FOR JURY TRIAL

Fanatics requests a trial by jury on all issues so triable under Fed. R. Civ. P. 38.

Dated: May 10, 2024

Respectfully submitted,

POWLEY & GIBSON P.C.

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(**Pro hac vice* forthcoming)

*Counsel for Defendant
Fanatics Retail Group North, LLC*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically with the United States District Court for the Southern District of New York on May 10, 2024, with notice of the case activity generated and sent to counsel of record.

/Thomas H. Curtin/
Thomas H. Curtin

*An Attorney for Defendant
Fanatics Retail Group North, LLC*